

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PEROXYCHEM LLC,	:	
	:	CIVIL ACTION NO. 2:14-cv-06446-JP
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
INNOVATIVE ENVIRONMENTAL	:	Jury Trial Demanded
TECHNOLOGIES, INC., PROVECTUS	:	
ENVIRONMENTAL PRODUCTS, INC.,	:	
MICHAEL SCALZI, AND JAMES MUELLER	:	
	:	
Defendants.	:	
	:	

**FIRST AMENDED COMPLAINT**

Plaintiff PeroxyChem LLC (“PeroxyChem”) by its undersigned counsel, for its Complaint against Innovative Environmental Technologies, Inc. (“IET”), Provectus Environmental Products, Inc. (“Provectus”), Michael Scalzi (“Scalzi”), and James (Jim) Mueller (“Mueller”), alleges as follows:

**JURISDICTION AND VENUE**

1. This action arises under the patent laws of the United States, Titles 17 and 35, United States Code and the Lanham Act 15 U.S.C. § 1125, *et seq.*
2. This Court has subject matter jurisdiction over PeroxyChem’s cause of action for patent infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a), for unfair competition and false advertising under 25 U.S.C. § 1125, *et seq.* and 28 U.S.C. § 1338(a) and supplemental pendent jurisdiction over its state law claims.

3. Venue properly lies in this District under the provisions of 28 U.S.C. §§ 1391 and 1400.

4. This Court has personal jurisdiction over IET because IET is incorporated in and has its principal place of business in Pipersville, Pennsylvania and/or otherwise has substantial contacts with Pennsylvania.

5. This Court has personal jurisdiction over Provectus because Provectus is incorporated in and has its principal place of business in Pipersville, Pennsylvania and/or otherwise has substantial contacts with Pennsylvania.

6. This Court has personal jurisdiction over Michael Scalzi because he possesses substantial contacts with Pennsylvania.

7. This Court has personal jurisdiction over Jim Mueller because he possesses substantial contacts with Pennsylvania.

**PARTIES**

8. PeroxyChem is a Delaware Limited Liability Corporation having its principal place of business in Philadelphia, Pennsylvania.

9. IET is incorporated in Pennsylvania with its principal place of business in Pipersville, Pennsylvania.

10. Provectus is incorporated in Pennsylvania with its principal place of business in Pipersville, Pennsylvania.

11. Scalzi is an individual who, upon information and belief, resides in Pennsylvania.

12. Mueller is an individual who, upon information and belief, resides in Illinois.

**BACKGROUND**

**A. PeroxyChem**

13. PeroxyChem is a leading global manufacturer and supplier of hydrogen peroxide, peracetic acid, persulfates and adjacent technologies.

14. Prior to February 28, 2014, PeroxyChem was a division of FMC Corp., operating as FMC Global Peroxygens.

**B. IET And The Illicit Founding Of Provectus And Hiring Of Former PeroxyChem Employee Jim Mueller**

15. IET is a former customer of FMC Global Peroxygens and PeroxyChem.

16. In January of 2014, Defendant Scalzi, among others, founded Provectus.

17. Former PeroxyChem employee Defendant Mueller, while still employed by PeroxyChem, used PeroxyChem's time and resources to assist Scalzi in founding and/or commencing the business of Provectus for the purpose of directly competing against PeroxyChem.

18. Moreover, while still working for PeroxyChem, Mueller began working for Provectus, having been announced as its President.

19. By using PeroxyChem's time and resources for his own and Provectus' benefit and for the purpose of directly competing against PeroxyChem, Mueller breached his fiduciary duties and duty of loyalty to PeroxyChem.

20. Mueller engaged in these activities despite being subject to and bound by a Confidential Information and Inventions Agreement.

**C. Mueller's And Provectus' False Advertising**

21. In addition to breaching his fiduciary duties and duty of loyalty to PeroxyChem, Mueller and Provectus (at the direction of Mueller) have engaged in false advertising in which Mueller and Provectus have made false claims regarding PeroxyChem's EHC<sup>®</sup> family of remediation products.

22. Among other things, Mueller and Provectus (at the direction of Mueller) claimed in an August 2014 newsletter, that PeroxyChem's EHC<sup>®</sup> family of remediation products do not contain mixed-release organic hydrogen donors when, in fact, they do, and that PeroxyChem's EHC<sup>®</sup> family of remediation products do not contain micro-nutrients or macro-nutrients when, in fact, they do.

23. These statements, which are literally false, were made in commerce in connection with commercial advertising or promotion with the intent to deceive customers of Provectus' and PeroxyChem's products.

24. These false statements are material and likely to influence the purchasing decisions of customers of Provectus' and PeroxyChem's products.

25. Mueller and Provectus (at the direction of Mueller) have stated that they will not retract or stop making these false statements in commerce and in connection with commercial advertising or promotion.

**D. IET's Breach Of A License Agreement**

26. On July 16, 2014, PeroxyChem and IET entered into a License Agreement dated July 16, 2014 (the "License Agreement") related to certain Licensed Technology and Licensor Know-How, as those terms are defined by the License Agreement.

27. Paragraph 2(a) of the License Agreement states, in part, that it grants IET “a limited, non-exclusive, non-transferable (except where the Agreement itself may be assigned as permitted under Section 14(d) hereof), non-sublicensable license (“**License**”) to use the Licensor Know-How, and Improvements to the Licensor Know-How, in each case to enable Licensee to provide remediation services through the use of the Licensed Technology.”

28. Pursuant to Section 3(b) of the License Agreement, IET is required to pay PeroxyChem on the “earlier of (A) the thirtieth (30th) calendar day following the date upon which Licensee [IET] has received final payment in consideration of the services that it has provided in connection with such Licensee Project; and (B) the ninetieth (90th) calendar day following the date upon which Licensee has substantially completed the services that it has provided in connection with such Licensee Project (regardless of whether Licensee has collected any or all payment from the applicable Customer).”

29. PeroxyChem learned that during the week of August 18, 2014, IET completed an In Situ Geochemical Stabilization (“ISGS”) pilot project for Weyerhaeuser in DeQueen, Arkansas.

30. Upon information and belief, IET utilized the Licensor Know-How and Licensed Technology covered by the July 16, 2014 License Agreement in connection with that project.

31. IET has not, however, made the required payment to PeroxyChem under the License Agreement, thereby breaching the agreement.

**E. IET’s Infringement Of United States Patent No. 7,785,038**

32. PeroxyChem is the assignee and owner of the right, title and interest in and to United States Patent No. 7,785,038 (“the ’038 patent”), including the right to assert all causes of action arising under said patent and the right to any remedies for infringement.

33. On August 31, 2010, United States Patent No. 7,785,038 (“the ‘038 patent”) entitled “OXIDATION OF ORGANIC COMPOUNDS” was duly and legally issued by the United States Patent and Trademark Office. A copy of the ‘038 Patent is attached as Exhibit “A.”

34. The ‘038 Patent teaches “an improved method and compositions for treating organic compounds present in soil, groundwater and other environments. The method involves the use of a composition comprising a solid state, water soluble peroxygen compound and Zero valent iron.

35. In furtherance of Defendants’ scheme to illicitly compete with PeroxyChem, IET, through work performed, has infringed and, upon information and belief, continues to infringe the ‘038 Patent.

**F. Michael Scalzi And IET Retaliate Against PeroxyChem’s Filing Of This Lawsuit By Publishing False And Defamatory Statements On The Internet About PeroxyChem’s Business Practices**

36. Following the filing of this lawsuit, Scalzi, acting on his own behalf and on behalf of IET, published various false and defamatory statements on the internet intending to injure PeroxyChem’s good name and reputation.

37. Among other false and defamatory statements, Scalzi and IET have stated that: (1) the “position(s) taken by PeroxyChem are akin to patenting mythical and imaginary creatures like the Unicorn!”; (2) “PeroxyChem has engaged in an aggressive policy of intimidation by-way of aggressive licensing agreements and excessive pricing policies.”; (3) that PeroxyChem has engaged in tactics resembling “blackmail”; and (4) that the price of PeroxyChem’s product is “inflated.”

38. These wholly false and defamatory statements, and others, were published by Michael Scalzi and IET on the website: <https://mikemscalz.wordpress.com>.

39. At the time of their publication, Michael Scalzi and IET either knew or should have known that the aforementioned statements contained therein were untrue.

40. Michael Scalzi's and IET's false and defamatory statements have been read by, among others, PeroxyChem's customers who have, upon information and belief, already contacted PeroxyChem to inquire about them.

41. As a result of Michael Scalzi's and IET's actions, PeroxyChem's good name and reputation has been injured to its detriment.

**COUNT I – INFRINGEMENT OF THE '038 PATENT BY IET**

42. Plaintiff realleges and incorporates by reference the averments set forth in each of the preceding paragraphs as if fully set forth herein.

43. IET has infringed and continues to infringe the '038 Patent by practicing one or more of the methods claimed in the '038 patent related to, inter alia, the treatment of organic compounds present in soil, groundwater, and other environments.

44. IET has had actual knowledge of the '038 patent and has willfully committed said infringing activities. These infringing activities violated and continue to violate 35 U.S.C. § 271.

45. PeroxyChem informed IET by verbal and written communication that IET's known business activities, particularly IET's business activities with Haley & Aldrich at the Hexcel site in Lodi, NJ, would require IET to obtain a license to practice the inventions taught by the patents-in-suit. In contravention of PeroxyChem's rights and interest in the '038 Patent, IET refused to obtain a license to practice the invention taught by the '038 Patent.

46. PeroxyChem has suffered damages as a result of IET's infringing activities and will continue to suffer damages in the future unless IET is enjoined from further infringing and/or inducing infringement of the '038 Patent.

**COUNT II – BREACH OF FIDUCIARY DUTY AND  
DUTY OF LOYALTY BY JIM MUELLER**

47. Plaintiff realleges and incorporates by reference the averments set forth in each of the preceding paragraphs as if fully set forth herein.

48. During the term of his employment with PeroxyChem, Mueller owed PeroxyChem a duty of the utmost good faith, undivided loyalty, diligence, and faithful service and a duty to place PeroxyChem's interests ahead of his own and not to act for persons, entities, or purposes whose interests would conflict with those of PeroxyChem.

49. Disregarding those duties, Mueller purposefully diverted his efforts during his time as an PeroxyChem employee towards the establishment and operation of Provectus, a company Mueller helped found with the express purpose of competing with PeroxyChem.

50. Mueller also breached his fiduciary duty and duty of loyalty to PeroxyChem by using PeroxyChem's time and resources in order to benefit Provectus.

51. Mueller was bound to act in good faith and solely for the benefit of PeroxyChem in all matters for which he was employed, and with due regard to the interests of PeroxyChem while an employee of PeroxyChem, but instead acted for his own interests, those of Provectus, and to injure PeroxyChem in its business.

52. PeroxyChem has suffered and will continue to suffer damages as a result of Mueller's tortious conduct.



**COUNT III - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY AND DUTY OF LOYALTY BY SCALZI AND PROVECTUS**

53. Plaintiff realleges and incorporates by reference the averments set forth in each of the preceding paragraphs as if fully set forth herein.

54. As set forth in Count II, Mueller breached his fiduciary duty to PeroxyChem by the wrongful actions alleged herein.

55. Scalzi and Provectus knew Mueller had a fiduciary duty and duty of loyalty to PeroxyChem.

56. Scalzi and Provectus knew that Mueller's wrongful conduct was a breach of his fiduciary duty and duty of loyalty to PeroxyChem.

57. Scalzi rendered substantial assistance and/or encouragement to Mueller in effecting his breach of fiduciary duty and duty of loyalty to PeroxyChem by encouraging Mueller to and/or assisting Mueller in diverting his time and efforts away from PeroxyChem, while Mueller was still employed by PeroxyChem, toward the establishment of Provectus, a company founded by Scalzi for the express purpose of competing with PeroxyChem.

58. Provectus rendered substantial assistance and/or encouragement to Mueller in effecting his breach of fiduciary duty to PeroxyChem by hiring Mueller to serve as the President of Provectus and encouraging him to and/or assisting him in working for the benefit of Provectus, all while Mueller was still employed by PeroxyChem.

59. PeroxyChem has suffered and will continue to suffer damages as a result of Scalzi and Provectus' tortious conduct.

**COUNT IV – BREACH OF CONTRACT BY IET**

60. Plaintiff realleges and incorporates by reference the averments set forth in each of the preceding paragraphs as if fully set forth herein.

61. Pursuant to the License Agreement, PeroxyChem granted a limited license to IET to utilize certain Licensed Technology and Licensor Know-How, as those terms are defined by the License Agreement.

62. In consideration for the license granted to it by PeroxyChem, IET agreed to pay PeroxyChem pursuant to Section 3(b) of the License Agreement.

63. IET breached this obligation by failing to pay PeroxyChem after IET completed an ISGS pilot project for Weyerhaeuser in DeQueen at which IET utilized the Licensor Know-How and Licensed Technology covered by the License Agreement.

64. Pursuant to Section 5 (a)(i) of the Agreement, IET had 30 days to cure these material breaches. The cure period has expired and IET has made no effort to cure its material breach of the Agreement.

65. PeroxyChem has suffered damages as a result of IET's breach of contract.

**COUNT V – DECLARATORY JUDGMENT THAT LICENSE AGREEMENT IS VALID AND BINDING ON IET**

66. Plaintiff realleges and incorporates by reference the averments set forth in each of the preceding paragraphs as if fully set forth herein.

67. Plaintiff negotiated and entered into the License Agreement with IET.

68. IET has since claimed that the License Agreement is not valid or binding.

69. Plaintiff is entitled to enforce the License Agreement, which is valid and binding.

70. Therefore, pursuant to 28 U.S.C. § 2201 and the Pennsylvania Declaratory Judgments Act, 42 Pa. Cons. Stat. § 7531, et seq., a judicial declaration that IET is bound by the License Agreement under which it must pay certain fees to PeroxyChem is necessary and appropriate at this time so that Plaintiff can ascertain its rights and duties with respect to the License Agreement, and a judicial determination and declaration should be made that Plaintiff is

entitled to its fees along with any losses, claims, damages, and liabilities it suffers as a result of IET's failure to acknowledge and abide by License Agreement.

**COUNT VI – DEFAMATION (LIBEL) BY SCALZI AND IET  
(PA Uniform Single Publication Act, 42 Pa.C.S. § 8341, et seq.)**

71. Plaintiff realleges and incorporates by reference the averments set forth in each of the preceding paragraphs as if fully set forth herein.

72. Scalzi and IET published the defamatory and false statements identified above on the website <https://mikemscalz.wordpress.com>, including that: (1) the “position(s) taken by PeroxyChem are akin to patenting mythical and imaginary creatures like the Unicorn!”; (2) “PeroxyChem has engaged in an aggressive policy of intimidation by-way of aggressive licensing agreements and excessive pricing policies.”; (3) that PeroxyChem has engaged in tactics resembling “blackmail”; and (4) that the price of PeroxyChem’s product is “inflated.”

73. These false statements are of a defamatory character as they tend to harm PeroxyChem’s reputation, expose PeroxyChem to contempt or ridicule, deter third persons from associating or dealing with PeroxyChem, and otherwise injure PeroxyChem’s business.

74. At the time of their publication, Scalzi and IET either knew or should have known that the aforementioned statements contained therein were untrue.

75. The false and defamatory statements made by Scalzi and IET are without justification and are not privileged.

76. Scalzi’s and IET’s false and defamatory statements have been read by, among others, PeroxyChem’s customers who have contacted PeroxyChem to inquire about them.

77. The recipients of these statements had an understanding of their defamatory meaning.

78. As a result of the Scalzi's and IET's actions, PeroxyChem has suffered and will continue to suffer harm to its good name and reputation.

**COUNT VII – FALSE ADVERTISING AGAINST  
MUELLER AND PROVECTUS**

79. Plaintiff realleges and incorporates by reference the averments set forth in each of the preceding paragraphs as if fully set forth herein.

80. Mueller and Provectus (at the direction of Mueller) have engaged in false advertising in which Mueller and Provectus have made false claims regarding PeroxyChem's EHC<sup>®</sup> family of remediation products.

81. Among other things, Mueller and Provectus (at the direction of Mueller) claimed in an August 2014 newsletter, (1) that PeroxyChem's EHC<sup>®</sup> family of remediation products do not contain mixed-release organic hydrogen donors when, in fact, they do and (2) that PeroxyChem's EHC<sup>®</sup> family of remediation products do not contain micro-nutrients or macro-nutrients when, in truth, they do.

82. These statements, which are literally false, were made in commerce in connection with commercial advertising or promotion with the intent to deceive customers for Provectus' and PeroxyChem's products.

83. These false statements are material and likely to influence the purchasing decisions of customers for Provectus' and PeroxyChem's products.

84. Mueller and Provectus (at the direction of Mueller) have stated that they will not retract or stop making these false statements in commerce and in connection with commercial advertising or promotion.

85. Additionally, Mueller has willfully and intentionally copied from materials belonging to PeroxyChem, his former employer, to create marketing material for his new

employer and/or business venture, Provectus, falsely passing those materials off as belonging to Provectus. In the newly created materials, Mueller and Provectus make false claims similar to those contained previously set forth in the August 2014 newsletter.

86. As a result of Mueller's and Provectus' false advertising, there is a likelihood of injury to PeroxyChem in terms of declining sales and loss of good will, which money damages cannot adequately compensate.

87. Unless Mueller and Provectus are enjoined from engaging in false advertising, PeroxyChem will suffer further irreparable injury and harm for which it has no adequate remedy at law.

88. As a result of the above-described intentional and deliberate false advertising, by Mueller and Provectus (at the direction of Mueller), PeroxyChem is entitled to an injunction, an award of damages suffered as a result of Mueller's and Provectus' false advertising, and attorneys' fees and costs, all as set forth in 15 U.S.C. §1117.

**PRAYER FOR RELIEF**

WHEREFORE, PeroxyChem respectfully requests that this Court grant the following relief:

- A. Declare that IET has infringed one or more of the claims of the '038 Patent.
- B. Grant an injunction enjoining and restraining IET and its officers, directors, agents, servants, employees, attorneys, and all others acting under, by or through them, directly or indirectly, from infringing the '038 Patent;
- C. Order IET to pay damages under 35 U.S.C. § 284, including treble damages, with prejudgment interest;

D. A declaration finding this to be an exceptional case, and ordering IET to pay the costs of this action and attorneys' fees as provided by 35 U.S.C. § 285, with prejudgment interest;

E. Declare that Jim Mueller breached his fiduciary duties and duty of loyalty to PeroxyChem;

F. Order Jim Mueller to pay damages for his breach of fiduciary duty together with punitive damages;

G. Declare that Scalzi and Provectus aided and abetted Mueller's breach of his fiduciary duties and duty of loyalty to PeroxyChem;

H. Order Scalzi and Provectus to pay damages for Mueller's breach of fiduciary duty together with punitive damages;

I. Declare that IET breached the License Agreement;

J. Order IET to pay damages for its breach of the License Agreement;

K. Declare that the License Agreement remains valid and enforceable;

L. Declare that Michael Scalzi and IET's false statements constitute defamation and libel;

M. Order Michael Scalzi and IET to pay damages for their defamatory and libelous statements, including punitive damages;

N. Grant a permanent injunction enjoining and restraining Michael Scalzi, IET, and its officers, directors, agents, servants, employees, attorneys, and all others acting under, by or through them, directly or indirectly, from making further defamatory and libelous statements against PeroxyChem;

O. Order Michael Scalzi and IET to remove the defamatory and libelous statements published about PeroxyChem from any online or hardcopy publication and to file with the Court and serve upon PeroxyChem a report in writing under oath setting forth in detail the manner and form in which they have complied with the injunction entered by the Court within thirty (30) days after the entry of the injunction;

P. Declare that Mueller and Provectus have engaged in false advertising;

Q. Order that Mueller and Provectus pay damages for their false advertising;

R. Grant a permanent injunction enjoining and restraining Mueller, Provectus, and its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with it, from engaging in false advertising directed to PeroxyChem and its products;

S. Order Michael Scalzi and IET to remove false advertising from any online or hardcopy publication and to file with the Court and serve upon PeroxyChem a report in writing under oath setting forth in detail the manner and form in which they have complied with the injunction entered by the Court within thirty (30) days after the entry of the injunction;

U. Damages suffered by PeroxyChem as a result of Mueller's and Provectus' false advertising;

U. An Order requiring IET to pay the costs of this action and attorneys' fees as provided by 15 U.S.C. § 1117, with prejudgment interest;

V. Grant any and all such additional and further relief as this Court may deem just and equitable.

PeroxyChem hereby demands that all issues be determined by a jury.

Respectfully submitted,

**DUANE MORRIS LLP**

Dated: January 23, 2014

BY: By: /s/ Jeffrey S. Pollack (JSP5562)  
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**CERTIFICATE OF SERVICE**

I, Jeffrey S. Pollack, hereby certify that a true and correct copy of the foregoing has been served via ECF and first class mail, this 23rd day of January 2015 to the following:

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s/ Jeffrey S. Pollack  
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